

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS DOROBIALA,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware  
corporation,

Defendant.

Case No. 2:22-cv-01600

**CLASS ACTION COMPLAINT**

COMPLAINT

Case No. 2:22-cv-01600

010888-17/2052844 V1



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1 Plaintiff alleges the following based on personal knowledge as to his own acts and  
2 experiences and, as to all other matters, based on the investigation of counsel:

### 3 I. INTRODUCTION

4 1. Amazon, the largest online retailer in the United States, is open to all shoppers, but  
5 it offers benefits, including free shipping on Prime items, to its 163 million U.S. subscribers.<sup>1</sup>  
6 Globally, Amazon collects \$25 billion a year in Prime subscription fees with U.S. subscribers  
7 accounting for about three-quarters of its subscription revenue.<sup>2</sup> Amazon values its Prime members  
8 not only for the subscription fees it collects from them, currently \$139 a year, but also because  
9 Prime members spend more than twice as much as other Amazon customers, averaging about  
10 \$1,400 per year.<sup>3</sup>

11 2. Having so many Prime members also increases Amazon's share of online retail  
12 commerce. On average Prime members in the U.S. do 53% of their shopping online and make  
13 most of their online purchases on Amazon.<sup>4</sup> Among Prime members, 92% look forward to being  
14 able to order all goods through one retailer and 93% are more likely to buy from Amazon Prime  
15 than directly from a retailer's online site.<sup>5</sup>

16 3. Amazon also values Prime members for the wealth of data they provide Amazon.<sup>6</sup>  
17 As the Guardian reports, "whether it's the shopping app, the Kindle e-reader, the Ring doorbell,  
18 Echo smart speaker or the Prime streaming service," the more you use them, "the more their  
19 algorithms can infer what kind of person you are and what you are most likely to buy next."<sup>7</sup>  
20  
21

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22 <sup>1</sup> David Chang, *The average Amazon Prime member spends this much per year*, MOTLEY FOOL (July 22, 2022),  
23 <https://www.fool.com/the-ascent/personal-finance/articles/the-average-amazon-prime-member-spends-this-much-per-year/>.

24 <sup>2</sup> Brian Dean, *Amazon Prime User and Revenue Statistics (2022)*, BACKLINKO (Jan. 5, 2022),  
25 <https://backlinko.com/amazon-prime-users>.

26 <sup>3</sup> Chang, *supra* note 1.

27 <sup>4</sup> Patrick Munden, *The Amazon Prime Effect - setting a new standard for customer loyalty*, WUNDERMAN  
28 THOMPSON, <https://www.wundermanthompson.com/insight/the-amazon-prime-effect> (last accessed Nov. 8, 2022).

<sup>5</sup> *Id.*

<sup>6</sup> Kate O'Flaherty, *The data game: what Amazon knows about you and how to stop it*, THE GUARDIAN (Feb. 27, 2022), <https://www.theguardian.com/technology/2022/feb/27/the-data-game-what-amazon-knows-about-you-and-how-to-stop-it>.

<sup>7</sup> *Id.*

4. Because Prime members are so valuable to Amazon, it is loath to let them go. And it shows. Cancelling Prime “requires multiple steps of confirmation offers before one can ultimately pull the plug on the ongoing fee.”<sup>8</sup> In effect, the process tests the Prime member’s will to quit Amazon.

5. The hurdles to cancellation are intentional. In March 2022, Business Insider reviewed internal Amazon documents admitting that for several years and continuing today, Amazon has engaged in willfully deceptive practices to keep its Prime members locked into their memberships.<sup>9</sup> The documents refer to a secret project known as “Project Iliad,” which Amazon implemented to thwart Prime membership cancellations by adding multiple layers of questions and new offers before a Prime member could cancel their subscription.<sup>10</sup> The project was a success. After launching Project Iliad, Amazon managed to reduce the number of Prime cancellations by 14% at one point in 2017 as fewer members managed to reach the final cancellation page.<sup>11</sup>

6. This layered and confusing cancellation process relies on “dark patterns,” *i.e.*, methods of deception derived from behavioral psychology that exploit cognitive biases to influence and manipulate consumer choices. “Dark patterns are design features used to deceive, steer, or manipulate users into behavior that is profitable for an online service, but often harmful to users or contrary to their intent . . . . This could include using buttons with the same style but different language, a checkbox with double negative language, disguised ads, or time pressure designed to dupe users into clicking, subscribing, consenting, or buying.”<sup>12</sup>

7. As explained in a January 2021 report by the Norwegian Consumer Council, Amazon employs dark patterns in the wording, graphic design, and redundancies which Amazon

<sup>8</sup> Gerald Lynch, *Amazon Prime memberships are now harder to cancel – and it’s no accident*, TECH RADAR (Mar. 17, 2022), <https://www.techradar.com/news/amazon-prime-memberships-are-now-harder-to-cancel-and-its-no-accident>.

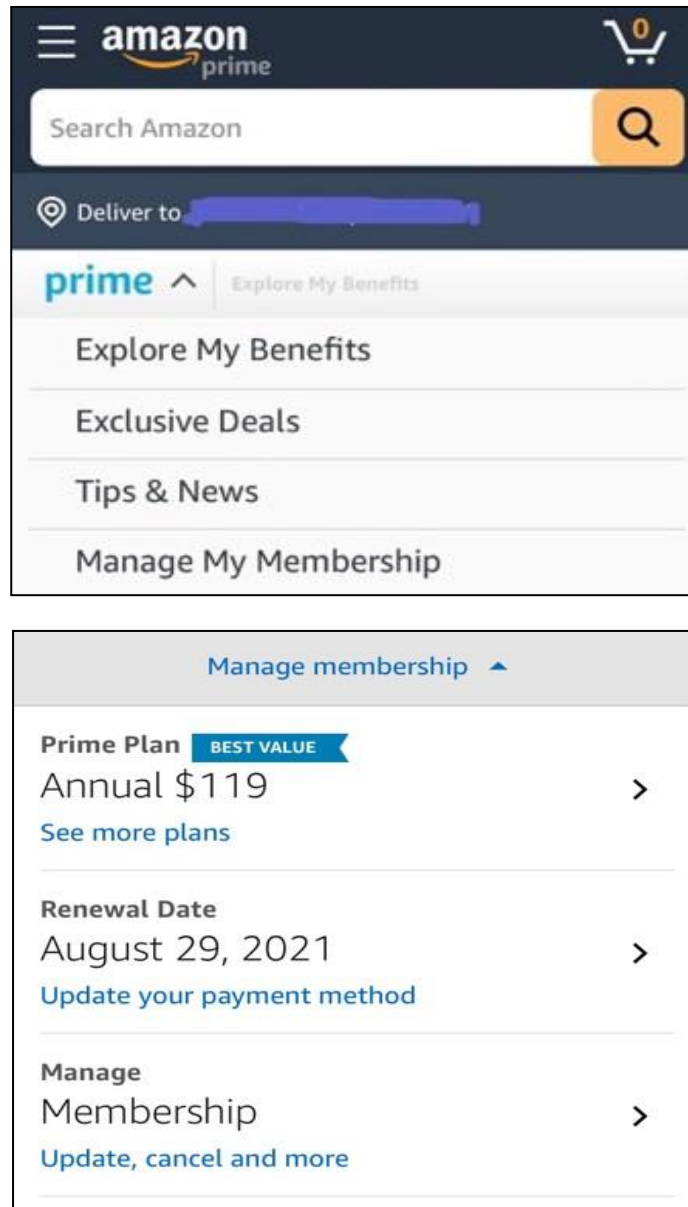
<sup>9</sup> Hannah Towey & Eugene Kim, *Amazon used a sneaky tactic to make it harder to quit Prime and cancellations dropped 14%, according to leaked data*, BUSINESS INSIDER (Mar. 16, 2022), <https://www.businessinsider.com/amazon-project-iliad-made-cancel-prime-membership-harder-leaked-data-2022-3>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Rohit Chopra, *Statement of Commissioner Rohit Chopra Regarding Dark Patterns in the Matter of Age of Learning, Inc.*, FTC File No. 1723186 (Sept. 2, 2020), [https://www.ftc.gov/system/files/documents/public\\_statements/1579927/172\\_3086\\_abcmouse\\_-\\_rchopra\\_statement.pdf](https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf).

employs to make its cancellation process needlessly difficult, time-consuming, and frustrating to users.<sup>13</sup> To begin with, whereas signing up with Amazon is simple and intuitive, cancellation involves navigating through three pages or “clicks,” just to start the process. Users who want to unsubscribe first need to log in to their Amazon account, navigate to the Amazon account menu, and find the “Prime membership” option:<sup>14</sup>



<sup>13</sup> Forbrukerrådet, *You Can Log Out, But You Can Never Leave. How Amazon manipulates consumers to keep them subscribed to Amazon Prime* (Jan. 14, 2021), <https://storage.forbrukerradet.no/media/wp-content/uploads/2021/01/2021-01-14-you-can-log-out-but-you-can-never-leave-final.pdf>.

<sup>14</sup> Complaint filed against Amazon by the Electronic Privacy Information Center (EPIC) with the D.C. Attorney General, at Figures E-G (Feb. 23, 2021), available at <https://epic.org/privacy/dccppa/amazon/EPIC-Complaint-In-Re-Amazon.pdf> (hereafter “EPIC Complaint”).

1 < Back

2 Membership Sharing

3 Share your benefits

4 Manage your household

5

6 Remind me before renewing

7 ☐ Send a reminder on August 26, 2021, 3 days

8 before my renewal date.

9

10 End Membership

11 By ending your membership you will lose access to

12 your Prime benefits.

13 End membership

13 8. Notably, the third page, which the user gets to by clicking the “Manage

14 membership” button, is confusingly labeled “Membership Sharing” and prompts the user in the

15 first instance to “Share your benefits,” whereas the “End Membership” button is at the bottom of

16 the page after the prompt “Remind me before renewing.” This pattern of multiple redundant layers

17 and needless sidetracks, which Amazon uses throughout the cancellation process, is a dark pattern

18 known as a “‘roach motel,’ where it is easy to get in, but almost impossible to escape.”<sup>15</sup> Whereas

19 signing up with Amazon requires only a few clicks, that is not the case for cancellation.<sup>16</sup>

20 9. The “End Membership” button is also accompanied by a warning that “[b]y ending

21 your membership you will lose access to your Prime benefits.” This vague warning is an example

22 of a dark pattern known as confirm-shaming, which Amazon’s cancellation process also frequently

23 relies on.<sup>17</sup> This dark pattern exploits a cognitive bias of loss aversion, where the disadvantages of

24 leaving a service appear more prominent than the advantages, so that individuals have a strong

27 <sup>15</sup> EPIC Complaint ¶ 17 n.27 (quotation omitted).

28 <sup>16</sup> *Id.* ¶ 9.

<sup>17</sup> Forbrukerrådet, *supra* note 13, at 19.

tendency to remain at the status quo (*i.e.*, subscribed to the service).<sup>18</sup> Amazon exploits the user's fear of missing out on benefits to undermine the user's resolve to cancel the Prime membership.<sup>19</sup>

10. After clicking on the "End Membership" button, canceling a Prime subscription further requires multiple clicks, decisions, and confirmations. Prime members are required to navigate as many as six additional webpages, and along the way Amazon provides confusing or manipulative messages.<sup>20</sup> Business Insider reported that when its reporter clicked on the "End Membership" button, the first prompt said "don't give up on movie night" and notified her of the number of days left until the next billing cycle.<sup>21</sup> The complaint filed by the Electronic Privacy Information Center (EPIC) with the Attorney General of the District of Columbia reported similar prompts:<sup>22</sup>



<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Id.* at 19.

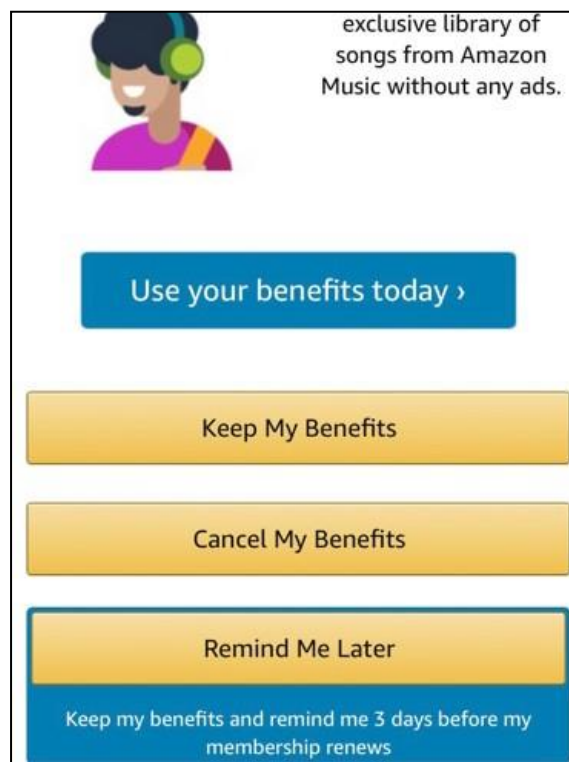
<sup>20</sup> Emma Woollacott, *Amazon Prime Too Hard To Cancel, Consumer Watchdog Complains*, FORBES (Jan. 14, 2021), <https://www.forbes.com/sites/emmawoollacott/2021/01/14/amazon-prime-too-hard-to-cancel-consumer-watchdog-complains/>.

<sup>21</sup> Towey & Kim, *supra* note 9.

<sup>22</sup> EPIC Complaint, figure H.

11. Amazon continues with further confirm-shaming and visual interferences to divert the Prime member from giving up his or her subscription.<sup>23</sup> For example, clicking on any of the warnings of lost benefits takes the user to a different Amazon page and stops the cancellation process.<sup>24</sup>

12. If Prime members persist, after scrolling past the list of benefits that will be lost, they will be faced with multiple choices on the next page, along with further graphics and description of Prime membership benefits.<sup>25</sup>



13. The first button, which is colored bright blue, states “Use your benefits today.” This is followed by three yellow buttons. The first yellow button, “Keep My Benefits,” cancels the process, meaning that the user stays subscribed to Amazon Prime. The second yellow button, “Cancel My benefits,” continues the process to unsubscribe. Here, Amazon creates uncertainty by changing the names of the buttons. On a previous page, the cancellation button was neutrally titled

<sup>23</sup>Forbrukerrådet, *supra* note 13, at 21.

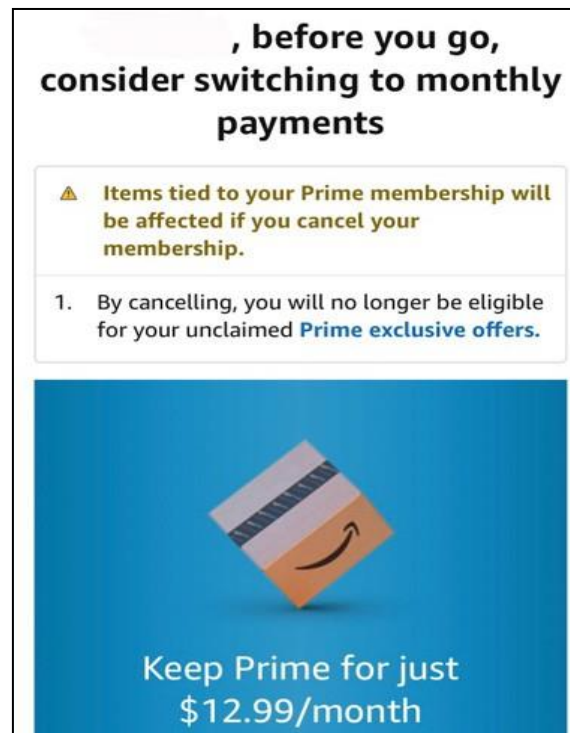
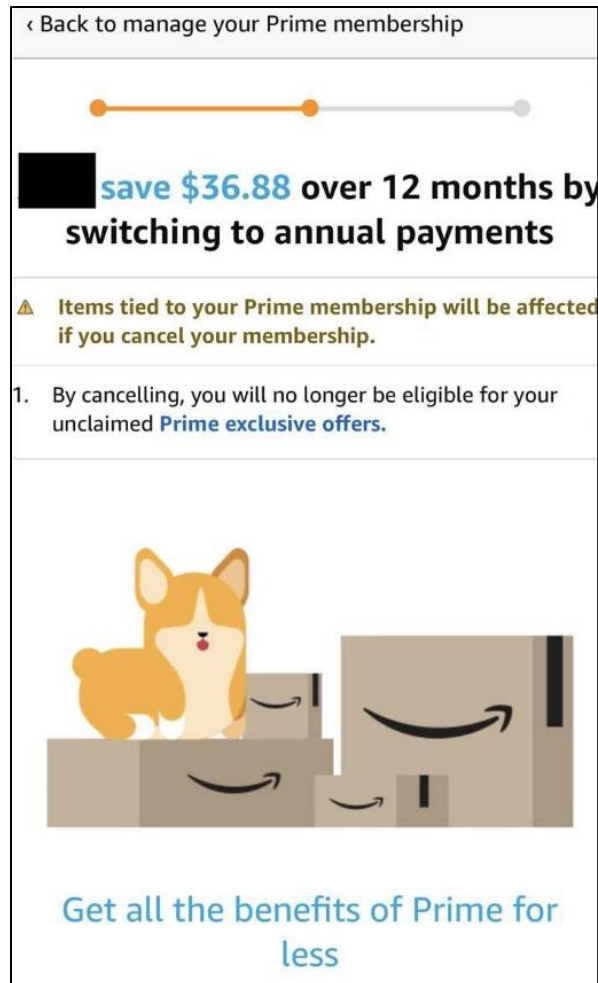
<sup>24</sup> *Id.* at 19.

<sup>25</sup> EPIC Complaint, figure I.



“End Membership,” but on this page the user must select “Cancel My Benefits” to proceed to cancellation. Changing the wording to “Cancel My Benefits” frames the option negatively and uses confirm-shaming to make the user feel like they will lose out if they continue the process to cancel the subscription.<sup>26</sup> The third yellow button, “Remind Me Later,” is highlighted as a default option, which further exploits the user’s bias towards the status quo: it does not require any action by the user and offers to provide a reminder three days before the membership renews.<sup>27</sup>

14. After clicking the “Cancel My Benefits” button, the user is taken to a new page, where he or she is told how much money could be saved by switching to an annual membership (if currently a monthly subscriber) or is prompted to switch to a monthly subscription (if currently an annual subscriber):<sup>28</sup>



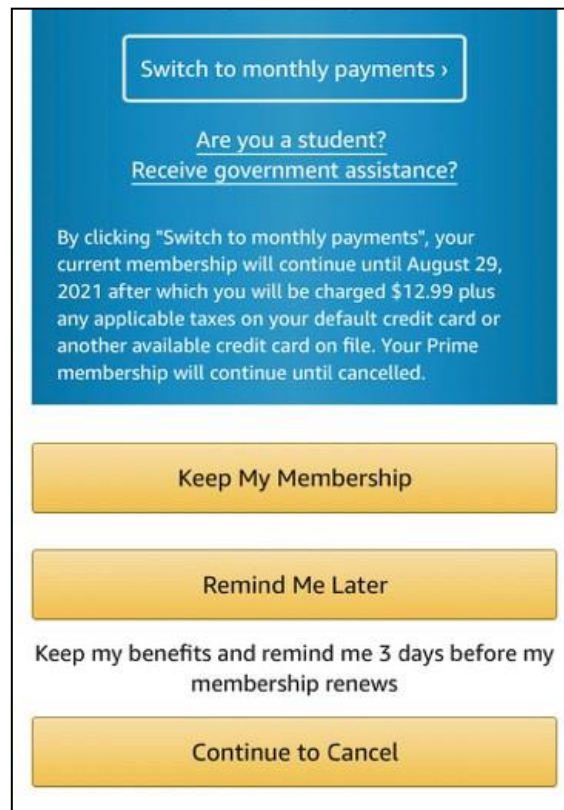
<sup>26</sup> Forbrukerrådet, *supra* note 13, at 20.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> Forbrukerrådet, *supra* note 13, at 21; EPIC Complaint, figure J.

15. These pages include a yellow triangle with the accompanying warning that “Items tied to your Prime membership will be affected if you cancel your membership.” It is not immediately clear what benefits or items will be affected, and in what way, which is likely to cause unease at the prospect of losing access to paid services (for example, purchased e-books or movies). This warning is followed by another alert that “[b]y cancelling, you will no longer be eligible for your unclaimed Prime exclusive offers,” along with more graphics, which the user must scroll past to proceed to cancellation.

16. The next page reiterates the prompt to switch subscription types:<sup>29</sup>

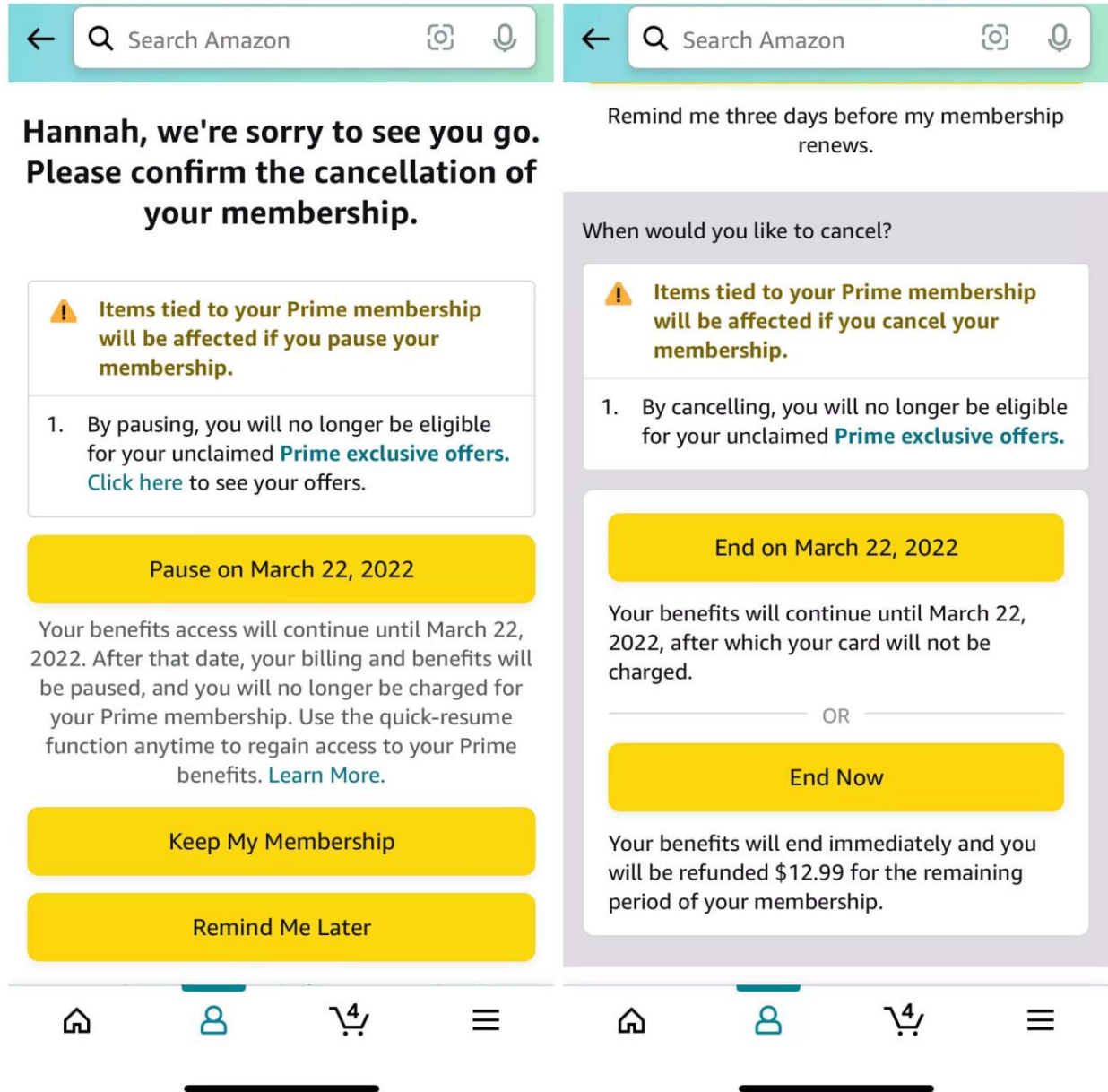


17. Like a previous page, it again offers three buttons to choose from, but this page varies the language and presents the options in a slightly different order. The first two options, “Keep My Membership” (no longer referring to the subscription as “Benefits”) and “Remind Me

<sup>29</sup> EPIC complaint, figure K.

Later” divert the user from the cancellation process. Clicking on “Continue to Cancel,” the third button (on a previous page it was the second option) allows the user to continue the cancellation:

18. The last prompt asks users to confirm the cancellation of their membership:<sup>30</sup>



19. Amazon again combines the vague warnings of lost benefits with the option of retaining the subscription or postponing the decision to a later date. The first three yellow buttons on the page offer to pause or keep the membership, or be reminded later, and further down the page are two final yellow buttons listing different options of when to cancel the membership.

<sup>30</sup> Towey & Kim, *supra* note 9.

1 Clicking on any of the warnings or the alternative means of managing the user's membership (like  
 2 pausing the membership) takes the user to a different Amazon page and stops the cancellation  
 3 process.<sup>31</sup>

4 20. At this point in the procedure, the user has already confirmed multiple times the  
 5 desire to cancel his or her Prime subscription. But unless the user clicks the "End Now" button on  
 6 this final page, the user remains subscribed with Amazon Prime.

7 21. The consumer group, EPIC, describes Amazon's convoluted cancellation process  
 8 as a misdirection designed to foster uncertainty about the choice to cancel Amazon Prime.<sup>32</sup> EPIC  
 9 submitted a joint letter with other consumer groups to request that the FTC investigate Amazon's  
 10 employment of dark patterns in the Amazon Prime subscription cancellation process, which the  
 11 agency acted on.<sup>33</sup> As part of its investigation, the FTC subpoenaed 20 current and former Amazon  
 12 employees and executives to testify, including Amazon founder Jeff Bezos and current Amazon  
 13 CEO Andy Jassy.<sup>34</sup> As part of its probe, the FTC asked Amazon to identify its executives who use  
 14 disappearing messaging apps to talk about things like Prime program enrollment and cancellation  
 15 processes and to provide the agency a log of those messages.<sup>35</sup>

16 22. At the same time as the FTC initiated proceedings in the United States, the EU  
 17 Commission also launched a probe into Amazon's conduct.<sup>36</sup> As part of its cooperation with  
 18 European authorities, Amazon began modifying its Prime web interface last year, labelling the  
 19 cancel button more clearly and shortening the explanatory text.<sup>37</sup> This past July, to comply fully  
 20

21 <sup>31</sup> Forbrukerrådet, *supra* note 13, at 19.

22 <sup>32</sup> EPIC complaint ¶14.

23 <sup>33</sup> EPIC, Press Release, *D.C. Attorney General Files Antitrust Suit Against Amazon* (May 25, 2021), available at  
<https://epic.org/d-c-attorney-general-files-antitrust-suit-against-amazon/>

24 <sup>34</sup> Marcy Gordon, *Amazon: FTC probe hounding Bezos, execs; subpoenas too broad*, AP WIRE, (Aug. 17, 2022)  
<https://apnews.com/article/technology-amazoncom-inc-subpoenas-federal-trade-commission-5a2ab123f8b395b4bb19949c7a70ee90>; Eugene Kim & Katie Canales, *If Jeff Bezos or Amazon executives like CEO Andy Jassy used vanishing messages to discuss Prime, the FTC wants them handed over as it investigates the company's sign-up tactics*, YAHOO! (Aug. 16, 2022), <https://www.yahoo.com/news/jeff-bezos-amazon-executives-ceo-203730883.html>.

26 <sup>35</sup> Kim & Canales, *supra* note 37.

27 <sup>36</sup> European Commission, Press Release, *Consumer protection: Amazon Prime changes its cancellation practices to comply with EU consumer rules* (July 1, 2022), [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_4186](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4186).

28 <sup>37</sup> *Id.*

1 with the agency, Amazon also eliminated distracting warnings that deterred consumers from  
 2 cancelling, so that European consumers can now cancel their Prime subscription within two  
 3 clicks, using a prominent and clear “cancel button.”<sup>38</sup> However, these changes apply only to  
 4 Prime members in Amazon’s European online marketplaces. Amazon’s dark patterns continue  
 5 unabated in the U.S.<sup>39</sup>

## 6 II. JURISDICTION

7 23. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act  
 8 of 2005, 28 U.S.C. § 1332(d) because at least one Class member is of diverse citizenship from  
 9 Amazon, there are more than 100 Class members nationwide, and the aggregated amount in  
 10 controversy exceeds \$5,000,000, exclusive of interest and costs.

11 24. Plaintiff is a resident of California, who is an Amazon Prime member. Amazon’s  
 12 conduct as discussed further herein harmed and injured Plaintiff financially.

13 25. This Court has personal jurisdiction over Amazon because Amazon is  
 14 headquartered in Washington State, does business in Washington, directly or through agents, and  
 15 has registered with the Washington Secretary of State, such that it has sufficient minimum contacts  
 16 with Washington.

## 17 III. VENUE

18 26. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because Amazon’s principal  
 19 place of business is in this judicial district, and a substantial part of the events giving rise to the  
 20 claims occurred in this judicial district.

21 27. There is also a venue provision, specifying this judicial district under the terms of  
 22 use for all Amazon customers.<sup>40</sup>

23  
24  
25  
26 <sup>38</sup> *Id.*

27 <sup>39</sup> Natasha Lomas, *Amazon agrees to drop Prime cancellation ‘dark patterns’ in Europe*, TECHCRUNCH (July 1,  
 2022), <https://techcrunch.com/2022/07/01/amazon-ends-prime-cancellation-dark-patterns-europe/>.

28 <sup>40</sup> Conditions of Use - Amazon Customer Service,  
<https://www.amazon.com/gp/help/customer/display.html%3FnodeId%3DGLSBYFE9MGKKQXXM>

#### IV. PARTIES

##### A. Plaintiff

28. Thomas Dorobiala is a resident of Murrieta, California. He has been an Amazon Prime Member since March 28, 2020, when he started with a free trial. At the end of the free trial Amazon automatically charged him a subscription fee. Around February 2022, he decided to cancel his membership, when he heard that Amazon was raising the subscription fee for Amazon Prime. But when he attempted to cancel online, he found that the cancellation process required multiple steps (4-6 different things) and each time the information kept changing and “things kept popping up.” As a result, after following several steps, he became confused by the process and couldn’t cancel. He’s still an Amazon Prime member today and continues to pay subscription fees to Amazon.

##### B. Defendant Amazon

29. Amazon is the largest retailer in the United States and operates the largest electronic commerce (“e-commerce”) marketplace in the world. The number of Amazon’s Prime subscription members rivals Netflix subscribers.<sup>41</sup> Amazon, a Delaware corporation, is registered with the Washington Secretary of State and has its principal headquarters in Seattle, Washington.

#### V. STATEMENT OF FACTS

30. The term “dark patterns” as employed in this complaint is not a science fiction reference but a term of art from the field of user experience (“UX”). The International Organization for Standardization (ISO) defines “user experience” as a “person’s perceptions and responses that result from the use or anticipated use of a product, system or service.”<sup>42</sup> Dark patterns in UX are “carefully designed misleading interfaces by UX design experts that trick the users into choosing

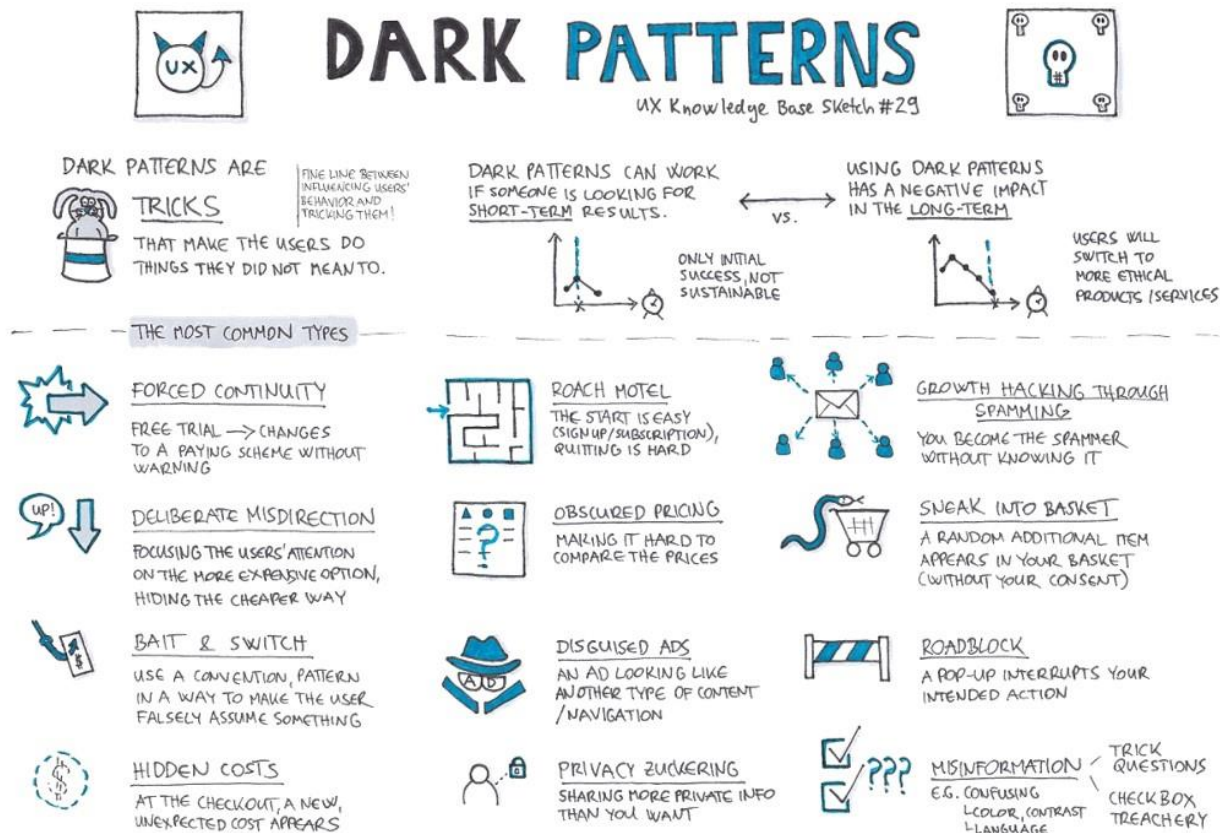
<sup>41</sup> Parkev Tatevosian, *Netflix Versus Amazon Prime: The Race to 200 Million Subscribers*, THE MOTLEY FOOL (Oct. 17, 2020), <https://www.nasdaq.com/articles/netflix-versus-amazon-prime%3A-the-race-to-200-million-subscribers-2020-10-17>.

<sup>42</sup> UIUX Trend, *User Experience (UX): Process and Methodology*, <https://uiuxtrend.com/user-experience-ux-process/> (last accessed Nov. 8, 2022).



paths that they didn't probably want to take, thus fulfilling the business objectives, completely ignoring the requirements and ethics of users."<sup>43</sup>

31. The term was first coined by cognitive scientist Harry Brignull, who borrowed from existing UX terminology. In UX, designers refer to common, re-usable solutions to a problem as a "design pattern," and conversely to common mistakes to solutions as "anti-patterns."<sup>44</sup> The term "dark patterns" was intended to "communicate the unscrupulous nature" of the design "and also the fact that it can be shadowy and hard to pin down."<sup>45</sup> The following provide some examples of dark patterns:<sup>46</sup>



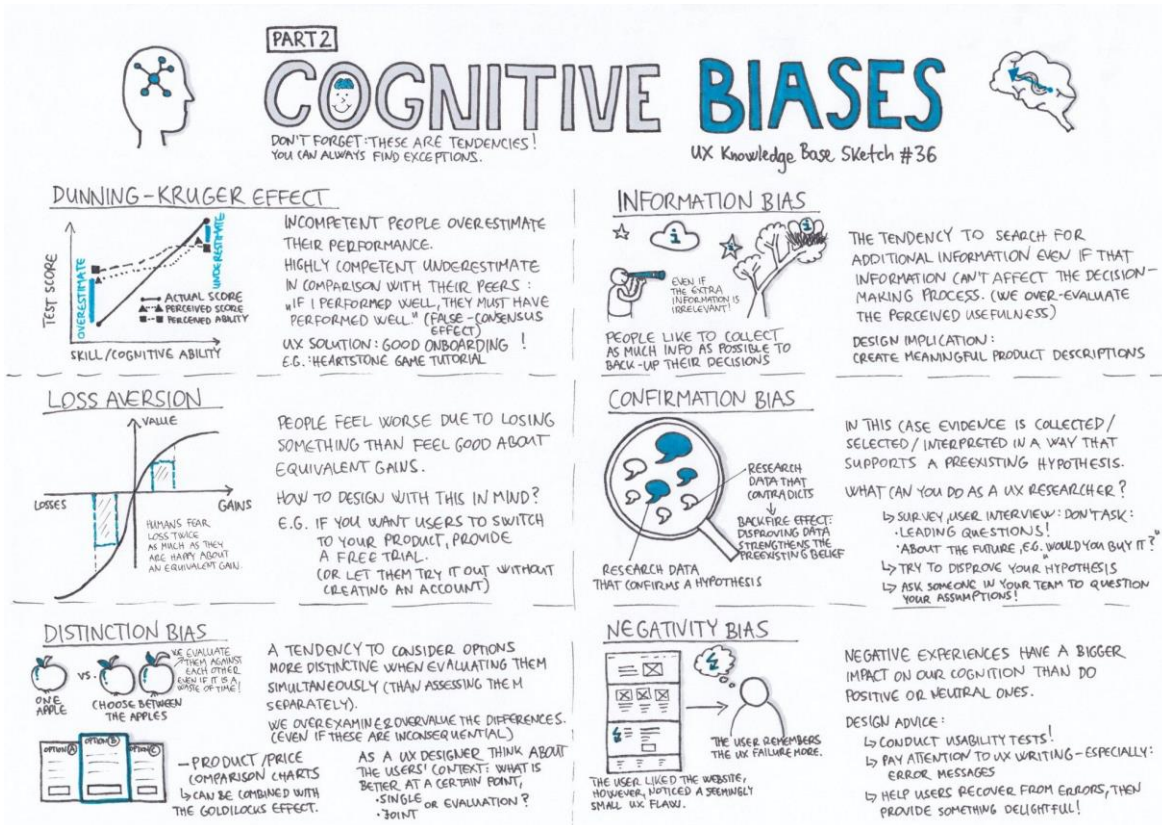
<sup>43</sup> Joey Ricard, *UX Dark Patterns: The Dark Side Of The UX Design*, KLIZO SOLS. PVT. LTD. (Nov. 9, 2020), <https://klizos.com/ux-dark-patterns-the-dark-side-of-the-ux-design/>.

<sup>44</sup> Harry Brignull, *Bringing Dark Patterns to Light*, MEDIUM (June 6, 2021), <https://harrybr.medium.com/bringing-dark-patterns-to-light-d86f24224ebf>

<sup>45</sup> *Id.*

<sup>46</sup> Sarbasish Basu, *What is a dark pattern? How it benefits businesses - Some examples*, H2S MEDIA (Dec. 19, 2019), <https://www.how2shout.com/technology/what-is-a-dark-pattern-how-it-benefit-businesses-with-some-examples.html>.

32. Dark patterns themselves can be traced to the use of applied psychology and A/B testing in UX.<sup>47</sup> In the 1970s, behavioral science sought to understand irrational decisions and behaviors and discovered that cognitive biases guide all our thinking. The following provides examples of cognitive biases, including some that Amazon employs in its cancellation process:<sup>48</sup>



33. Whereas the early behavioral research focused on understanding rather than intervention, later researchers, like Cass Sunstein and Richard Thaler, authors of the book *Nudge* made a policy argument that institutions should engineer “choice architectures” in a way that uses behavioral science for the benefit of those whom they serve.<sup>49</sup>

34. Another step in the development is the use of A/B testing in UX. A/B testing is a quantitative research method that presents an audience with two variations of a design and then

<sup>47</sup> *Id.*

<sup>48</sup> Krisztina Szerovay, *Cognitive Bias—Part 2*, UX KNOWLEDGE BASE (Dec. 19, 2017), available at <https://uxknowledgebase.com/cognitive-bias-part-2-fab5b7717179>.

<sup>49</sup> Arvind Narayanan et al., *Dark Patterns: Past, Present, and Future. The evolution of tricky user interfaces*, 18 ACM QUEUE 67-91 (2002), available at <https://queue.acm.org/detail.cfm?id=3400901>.



measures which actions they take (or do not take) in response to each variant.<sup>50</sup> UX designers use this method to determine which design or content performs best with the intended user base.<sup>51</sup>

35. Unscrupulous UX designers subverted the intent of the researchers who discovered cognitive biases by using these principles in ways that undermined consumers' autonomy and informed choice, and they used A/B testing to turn behavioral insights into strikingly effective user interfaces that deceived consumers in ways that were more profitable to the company applying them.<sup>52</sup> Dark patterns increase a company's ability to extract revenue from its users by nudging or tricking consumers to spending more than they otherwise would, yield more personal information, or see more ads.<sup>53</sup>

36. A combination of dark patterns has a compounding effect, which will increase the impact of each dark pattern and exacerbate the harm they present to the consumer.<sup>54</sup> Amazon uses a combination of dark patterns to decrease the likelihood that its Prime subscribers will make it all the way to the final confirmation of cancellation. For example, Amazon employs misdirection, which is when "the design purposefully focuses your attention on one thing in order to distract your attention from another."<sup>55</sup> Brightly colored buttons offering alternatives to cancelling and whimsical graphics to depict the value remaining with Prime are not intended to streamline the process of cancellation, but to confuse and distract the Prime member and keep him or her from quitting the subscription.

37. Amazon also uses confirm-shaming, where the "option to decline is worded in such a way as to shame the user into compliance."<sup>56</sup> For example, vague warnings about the loss of benefits associated with cancelling Prime membership relies on the cognitive bias of loss aversion,

<sup>50</sup> UXPin, *A/B Testing in UX Design: When and Why It's Worth It*, <https://www.uxpin.com/studio/blog/ab-testing-in-ux-design-when-and-why/> (last accessed Nov. 8, 2022).

<sup>51</sup> *Id.*

<sup>52</sup> Narayanan *et al.*, *supra* note 52.

<sup>53</sup> *Id.*

<sup>54</sup> FTC, Staff Report, *Bringing Dark Patterns to Light* at 2 (Sept. 2022), available at [https://www.ftc.gov/system/files/ftc\\_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf) at 2.

<sup>55</sup> *Types of deceptive design*, <https://www.deceptive.design/types> (last accessed Nov. 8, 2022).

<sup>56</sup> *Id.*

1 where a person's aversion to giving something up is greater than the utility associated with  
2 acquiring it.<sup>57</sup>

3 38. More generally, Prime membership fits the roach motel dark pattern, where "you  
4 get into a situation very easily, but then you find it is hard to get out of it (e.g., a premium  
5 subscription)."<sup>58</sup> Signing up for Prime is very easy, whereas cancellation is very burdensome.

6 39. Amazon knows how to simplify the process. It has done so in Europe, but it does  
7 not want to give up the advantages of its captive Prime members, so despite the ongoing  
8 investigation by the FTC into Amazon's practices, Amazon continues to this day to employ dark  
9 patterns to nudge or trick its Prime members into remaining with Prime.

10 40. Plaintiff and class members have been harmed by Amazon's deception. Through  
11 willfully deceptive practices Amazon tricks Prime members into paying more subscription fees  
12 than they intended.

## 13 VI. CLASS ACTION ALLEGATIONS

14 41. Plaintiff brings this action on behalf of himself, and as a class action under the  
15 Federal Rules of Civil Procedure ("Rules"), specifically Rules 23(a) and (b)(3), seeking damages  
16 pursuant to federal law on behalf of the members of the following Class:

17 All persons who enrolled in Amazon Prime in the United States and  
18 attempted on or after November 9, 2018, to cancel their Prime  
19 membership online by clicking at least two pages in the cancellation  
20 process and who incurred a membership fee after failing to cancel  
21 their membership for that period, for which Amazon did not  
22 reimburse them.

21 Excluded from the Class are Amazon and its officers, directors,  
22 management, employees, subsidiaries, or affiliates. Also excluded  
23 from the Class are the district judge or magistrate judge to whom  
24 this case is assigned, as well as those judges' immediate family  
25 members, judicial officers and their personnel, and all governmental  
26 entities.

24 42. The identities of all Class members are readily identifiable from information and  
25 records maintained by Amazon.

27 <sup>57</sup> Forbrukerrådet, *supra* note 13, at 19.

28 <sup>58</sup> *Types of deceptive design*, *supra* note 55.

43. **Numerosity:** Members of the Class are so numerous that joinder is impracticable. Plaintiff believes that there are hundreds of thousands, if not millions, of Class members; ~~geographically dispersed throughout each of the asserted state classes;~~ such that joinder of all class members is impracticable.

44. **Typicality:** Plaintiff's claims are typical of the claims of the other Class members. The factual and legal bases of Amazon's liability are the same and resulted in injury to Plaintiff and all other members of the proposed Class.

45. **Adequate representation:** Plaintiff will represent and protect the interests of the proposed Class both fairly and adequately. ~~They have~~ Plaintiff has retained counsel competent and experienced in complex class-action litigation. Plaintiff has no interests that are antagonistic to those of the proposed Class, and his interests do not conflict with the interests of the proposed Class members he seeks to represent.

46. **Commonality:** Questions of law and fact common to the members of the Class predominate over questions that may affect only individual Class members because Amazon has acted on grounds generally applicable to the Class and because Class members share a common injury. Thus, determining damages with respect to the Class as a whole is appropriate. The common applicability of the relevant facts to claims of Plaintiff and the proposed Class are inherent in Amazon's wrongful conduct because the financial injuries incurred by Plaintiff and each member of the proposed Class arose from the same unfair and deceptive conduct alleged herein.

47. There are common questions of law and fact specific to the Class that predominate over any questions affecting individual members, including:

- a. Whether Amazon's cancellation process is likely to mislead a reasonable consumer;
- b. Whether Amazon intentionally designed its cancellation policy to deceive consumers by creating unreasonable obstacles to completing the cancellation process;
- c. Whether Plaintiff and Class members have been damaged by Amazon's conduct; and
- d. Whether Plaintiff and the other Class members are entitled to damages and other monetary relief and, if so, in what amount.



53. Amazon engaged in unfair or deceptive acts or practices through the conduct described herein by employing dark patterns to confuse or frustrate Plaintiff and members of the Class to nudge or trick them into continuing their Prime subscriptions despite their intention of quitting the service. Amazon's online Prime cancellation subscription process requires a user to navigate a complicated and manipulative interface that employs skewed wording, confusing choices, and repeated nudging. The tactics used in this process are deceptive because they tend to mislead users who wish to terminate their Prime subscriptions by steering consumers away from their intended outcome.

54. While attempting to cancel an Amazon Prime subscription online, a user cannot reasonably avoid Amazon's use of dark patterns and manipulative interface design. Amazon's acts and practices had the capacity to deceive a substantial portion of the public and did in fact deceive reasonable consumers, including Plaintiff, by confusing or manipulating them, directing them away from the cancellation process, or frustrating their resolve to quit the subscription.

55. Amazon intentionally and knowingly misled Plaintiff and Class members. Amazon created and implemented its Project Iliad precisely to deceive members of the public, and Amazon's own internal documents confirm that it succeeded, *e.g.*, by reducing cancellations by as much as 17% at one point in 2017.

56. Plaintiff and Class members have suffered an injury in fact, including the payment of subscription fees.

57. Amazon employed dark patterns to hinder Plaintiff and Class members from ending their Prime subscriptions. But for Amazon's unfair and deceptive practices, Plaintiff and Class members would have cancelled their Prime memberships (or would have cancelled earlier) and would not have incurred additional subscription fees.

58. Amazon continues to employ its dark patterns in the cancellation process. Plaintiff seeks to enjoin further unfair and fraudulent acts or practices by Amazon, recover damages and obtain all other relief allowed under Wash. Rev. Code § 19.86.010.

### **JURY TRIAL DEMANDED**

59. Plaintiff hereby demands a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Amazon as follows:

A. The Court determine that this action may be maintained as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiff as a Class Representative and his counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once certified;

B. An order enjoining Amazon's use of dark patterns in the Amazon Prime cancellation process and ordering Amazon to simplify its cancellation process as it has done in Europe;

C. Actual damages in an amount to be determined at trial;

D. Treble damages pursuant to Wash. Rev. Code § 19.86.090;

E. An order requiring Amazon to pay both pre- and post-judgment interest on any amounts awarded; and

F. Such other or further relief as may be appropriate.

DATED this 9th day of November, 2022. Respectfully submitted,

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